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JOHN S. BEULICK
C/O ARMSTRONG TEASDALE, LLP
ONE METROPOLITAN SQUARE
SUITE 2600
ST LOUIS, MO 63102-2740

EXAMINER

LUGO, CARLOS

ART UNIT PAPER NUMBER

3677

DATE MAILED: 08/06/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/682,877

Applicant(s)

MILLER ET AL.

Examiner

Carlos Lugo

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 July 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 11-15 and 19 is/are allowed.
- 6) ☒ Claim(s) 1-10 and 16-18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☒ The proposed drawing correction filed on 18 September 2002 is: a) ☒ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

1. This Office Action is in response to applicant's amendment file don July 14, 2003.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) The invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. **Claims 6-10 and 16-18 are rejected** under 35 U.S.C. 102(b) as being anticipated by US Pat No 2,948,560 to Rop.

Regarding claim 6, Rop discloses a door latch assembly comprising a door having a door retainer projection (16). A latch handle (20) is pivotally mounted to the door. A latch actuator (14) is pivotally mounted to the door. The latch handle pivots in one direction and the latch actuator pivots in another direction. The handle is selectively positioned between an open position and a closed position.

As to claim 7, Rop discloses that the latch assembly further comprises a keeper (11). The limitation that the appliance is a dishwasher has not being considered because the appliance has not being positively claimed.

As to claim 8, Rop discloses that the latch actuator comprises a keeper engagement surface (16) wherein the keeper engagement surface disengages the keeper from the door retainer projection as the latch handle is rotated.

As to claim 9, Rop illustrates that the handle and the actuator are placed on a housing or bracket.

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As to claim 10, Rop illustrates that the latch handle comprises a substantially rounded engagement portion (at the end of the handle 20) in contact with the latch actuator.

As to claim 16, Rop discloses a door latch assembly comprising an escutcheon or shield (Figure 10 where 14 is located) and a latch handle (20) pivotally mounted to the escutcheon about a first longitudinal axis. A latch actuator (14) is pivotally mounted to the escutcheon about a second longitudinal axis. The latch handle contacts the latch actuator when it is rotated about the first longitudinal axis in a first direction and causing the latch actuator to rotate about the second longitudinal axis in a second direction opposite to the first direction.

As to claim 17, Rop discloses that the escutcheon includes a latch portion (16). Rop illustrates that the latch handle further comprises a closed handle stop (the end of the handle near the pivot 21).

As to claim 18, Rop illustrates that the latch actuator (14) comprises a substantially flat plate.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. **Claims 1-5 are rejected** under 35 U.S.C. 103(a) as being unpatentable over US Pat No 2,948,560 to Rop in view of US Pat No 4,776,620 to Marks et al (Marks).

Regarding claim 1, Rop discloses a latch assembly comprising a handle (20) pivotally mounted to a door. A latch actuator (14) is rotationally couple to the handle and is mounted to the door.

The handle rotates in a first direction and the actuator rotates in a second direction opposed to the first one.

A keeper (11) is engaged to a door retainer projection (16) in a closed position. The actuator is configured to disengage the keeper from the door retainer projection when the handle is actuated.

However, Rop fails to disclose that the keeper is resilient. Rop discloses that the latch actuator is resilient and the keeper rigid.

Marks teach that is known in the art to have a latch assembly with a resilient keeper (60) and a rigid actuator.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to have a resilient keeper and a rigid actuator, as taught by Marks, into a latching device as described by Rop, because it is mere a reversal of parts because either to have a rigid keeper and a resilient actuator, as described by Rop, or a resilient keeper and a rigid actuator, as taught by Marks, it will not affect the fact of engaging the keeper to the actuator.

As to claim 2, Rop illustrates that the handle comprises an actuator portion in sliding engagement with the latch actuator (the portion at the end of the handle).

As to claim 3, Rop illustrates that the handle further comprises a closed handle stop (the end of the handle near the pivot 21).

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As to claim 4, Rop discloses that the handle rotates about a first longitudinal axis (21) and the actuator rotates about a second longitudinal axis (15).

As to claim 5, Rop illustrates that the handle and the actuator are placed on a housing or bracket.

Allowable Subject Matter

6. Claims 11-15 and 19 are allowed.

Response to Arguments

7. Applicant's arguments filed on July 14, 2003 have been fully considered but they are not persuasive.

In response to applicant's argument Rop fails to disclose a door latch assembly for a dishwasher comprising a door having a door retainer projection, a latch handle is pivotally mounted to the door. A latch actuator is pivotally mounted to the door, the latch handle pivots in one direction and the latch actuator pivots in another direction and the handle is selectively positioned between an open position and a closed position (Page 3 Line 17), Rop discloses the invention as claimed (see the rejection above).

As to applicant's argument, especially that Rop fails to disclose a door including a door retainer projection (Page 3 Line 22), Rop discloses that the door includes a door retainer projection (16).

As to applicant's arguments that Rop fails to disclose the invention as claimed in claim 16 (Page 4 Line 5), Rop discloses the invention as claimed (see the rejection above).

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As to applicant's arguments, especially that Rop fails to disclose a door having an escutcheon (Page 4 Line 10), Rop illustrates in Figure 10 that the door includes an escutcheon or shield (where 14 is located).

As to applicant's arguments that Rop, as modified by Marks, fails to disclose the invention as claimed in claim 1 (Page 4 Line 20), Rop discloses the invention substantially as claimed. The only thing that Rop fails to disclose is that the keeper is resilient. Rop discloses that the latch actuator is resilient and the keeper rigid.

Marks is used to teach that is known in the art to have a latch assembly with a resilient keeper (60) and a rigid actuator.

As to applicant's arguments of obviousness (Page 5 Line 7), a conclusion of obviousness may be made from common knowledge and common sense of the person of ordinary skill without any specific hint or suggestion in a particular reference. In re Bozek, 416 F. 2d 1385, 1390 163USPQ545, 549 CCPA 1969.

As to applicant's arguments that the examiner's conclusion of obviousness is based upon improper hindsight reasoning (Page 5 Line 15), it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See In re McLaughlin, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

As to applicant's arguments that there is no motivation to combine Rop and Marks (Page 6 Line 1), Rop fails to disclose that the keeper is resilient. Rop discloses that the latch actuator is resilient and the keeper rigid. Marks teach that is known in the art to have a latch assembly with a resilient keeper and a rigid actuator.

The reversal of components in a prior art reference, where there is no disclosed significance to such reversal, is a design consideration within the skill of the art. In re Gazda, 219 F.2d 449, 104 USPQ 400 (CCPA 1955); In re Japikse, 181 F.2d 1019, 86 USPQ 70 (CCPA 1950).

As to applicant's arguments that the art teaches away (Page 6 Line 14), applicant is reminded that simply that there are differences between two references is insufficient to establish that such references "teach away" from any combination thereof. In re Beattie, 974 F.2d 1309, 1312-13, 24 USPQ2d 1040, 1042 (Fed. Cir. 1992).

As to applicant's arguments that the recitation "for a door including a door retaining projection" is considered as intended use (Page 7 Line 14), a recitation with respect to the manner in which an apparatus is intended to be employed does not impose any structural limitation upon the claimed apparatus, which differentiates it from a prior art reference disclosing the structural limitations of the claim. In re Pearson, 494 F.2d 1399, 181 USPQ 641 (CCPA 1974); In re Yanush, 477 F.2d 958, 177 USPQ 705 (CCPA 1973); In re Finsterwalder, 436 F.2d 1028, 168 USPQ 530 (CCPA 1971); In re Casey, 370 F.2d 576, 152 USPQ 235 (CCPA 1967); In re Otto,

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312 F.2d 937, 136 USPQ 458 (CCPA 1963); Ex parte Masham, 2 USPQ2d 1647 (BdPatApp & Inter 1987).

Conclusion

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carlos Lugo. The examiner phone number is (703)-305-9747. The fax number for correspondence before a final action is (703)-872-9326 and the fax number for correspondence after final action is (703)-872-9327. The email direction of the examiner is carlos.lugo@uspto.gov. The examiner can normally be reached on Monday to Friday from 9:30am to 6:30pm (EST). If the examiner is not available, please leave a message, including the application number and the examiner will answer the message as soon as possible.

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July 28, 2003

J. J. Swann

J. J. SWANN
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600